

**Colombian Adoptee
Search And Support**

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Via Email and Regular Mail

U.S. Department of State
CA/OCS/PRI
Adoption Regulations Docket Room SA-29
2201 C Street NW
Washington, DC 20520

**Re.: Comments of Colombian Adoptee Search and Support
concerning Standards and Regulations to Implement
the Intercountry Adoption Act**

The Colombian Adoptee Search and Support (CASAS) is an up-an-coming volunteer organization dedicated to providing emotional support and search support to all adult adoptees from Latin American. CASAS members are made up of Latin American adoptees, adoptive parents and birth parents. We are currently in the process of submitting our request for non-profit corporate status to the State of New York.

Through education and advocacy, we provide support, honesty, openness and respect for individuals and families connected in adoption. CASAS members have no financial interest in adoption.

CASAS appreciates this opportunity to submit our comments concerning the regulations and standards to be promulgated under the Intercountry Adoption Act ("the Act") which in turn implements the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption ("the Convention").

We understand the principle purpose of the Convention is "to establish safeguards to ensure that intercountry adoptions take place in the best interest of the child and with respect for his or her fundamental rights" (Art.1a).

We also understand that the principle purpose of the Act is the "protect the rights of, and prevent abuses against, children, birth families and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention and to ensure that such adoptions are in the children's best interest" (Sec.2(b)(2)).

A. Accreditation Procedures

Since the primary purpose of the Act is to protect rights and prevent abuses, accreditation implementing the Act should focus on results (e.g., services actually rendered to adoptive parents and prospective adoptive parents). Therefore the provider seeking accreditation should:

1. Provide a complete list of clients with whom he has dealt with a recent time period. All client should be able to be contacted randomly by the accrediting entity and questioned about the quality of services administered by the provider. Deliberate omissions of any clients required to be included would be grounds for denying accreditation;
2. The accrediting entity should examine all complaints received about the provider (including resolved complaints) and fully investigate them;
3. Records of any pending or resolved lawsuits against the provider should always be reviewed;
4. As a condition of accreditation, providers should be required to waive any confidentiality requirements that were created or imposed in order to protect the provider;
5. Accreditation in other cases (i.e., hospitals) is often a collegial exercise intended to improve general performance, however, to implement the Act and the Convention as a way to "safeguard and ensure that intercountry adoption is in the best interest of the child" and to prevent abuse encouraging "best practices" may not be generally desirable. Minimum standards must be enforced;

As stated, "Reviews(s) of written documentation" and "site visit(s)" The visits "may include interviews with personnel, adoptive parents, adoptees were age appropriate, and other individuals knowledgeable about the services provided by the" provider. The quadrennial reviews would be supplemented by "interim monitoring and data collection" "on at least an annual basis or more frequently as necessary: and by review of and response to complaints (G.2(c);D.2(b) and D.4(b)).

These priorities are precisely the reverse of what is added. The primary tool of accreditation should be monitoring the actual performance by (a) interviewing clients, personnel and former personnel of providers and (b) investigating all complaints. The examination of paperwork ("written documentation prepared according to a prescribed format) should be not be a priority but should be secondary.

B. Accreditation and Approval Standards

1. *Responsibility of Agents.* Providers must be fully responsible for all agents and/or associates that assist them (especially those who are paid), whether denominated "independent contractors," "facilitators," or any term.

If a providers' agent commits fraud, concealment, or simply negligence, the impact on both the child or the adoptive parent is the same, regardless of how the agent is designated. If it is clear that providers will be responsible for their agents, providers will see to it that their agents are reliable. Providers should assume to know whatever their agents know; if

this is done, providers will insist on communication from agents and will not rely on those they cannot trust.

2. *Medical Records.* Many members of CASAS have been negatively affected by providers who furnished incomplete and/or misleading medical histories. We believe the Act will be able to address this problem by requiring providers to provide to prospective adoptive parents with "a copy of the medical records of the child (which to the fullest extent practicable, shall include an English-language translation of such records)" at least two weeks before the adoption or before the adoptive parents travel to the country of origin, whichever is earlier (Sec. 203(b)(1)(A)(1)). The standard should be explicit that all medical information known or *available* to the provider or its agents is included. This must include the report prepared by the country of origin pursuant to Article 16a of the Convention, particularly as it concerns *family* and medical history, as it also address other special needs of a child. The records of disrupted adoptions should be examined with care to see that *all* required information was timely provided in English to the adoptive parents.

3. *Financial gain, profits, and remuneration of providers.* Article 8 of the Convention (U.S. Const., Art. IV) states:

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 32 of the Convention states:

1. No one shall derive improper financial aid or other gain from activity related to an intercountry adoption.
2. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
3. The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 8 thus requires the U.S. Government to enforce the provisions of Article 32 to prevent the "improper financial or other gain, profits in excess of costs and expenses, and unreasonably high remuneration." Such enforcement requires that adoption providers be required to disclose their finances as a condition of accreditation, including:

- a. Revenues, including "contributions" and/or "donations" and expenses, properly classified;
- b. All remuneration (including perquisites) to individuals owners, directors,

administrators and employees, separately stated;

- c. All payments to vendors and others who are related to the provider, its owners, directors and administrators, by either common ownership or family relationships;
- d. All amounts paid by clients of the provider to professionals involved in the adoption, if the professionals are retained, recommended or referred to clients by the provider.

Miscellaneous, audited amounts should be required in all cases. Also required should be the disclosure of financial data for individual adoptions as to which there are questions or complaints. All accrediting institutions should be required to randomly investigate the financial data of providers.

- 4. *Fee Restrictions.* Section 203(b)(1)(A)(iv) of the Act requires personnel providing intercountry adoption services to be compensated on a fee-for-service basis rather than a contingent fee basis. The accreditation standards should be explicit that this requirement applies to *all* personnel paid by the provider, whether they are called employees or independent contractors or something else. The standards should make clear that "fee-for-service" means payment by the hour or by the task, either should be clear to the client.
- 5. *Other Required Disclosures.* Section 203(b)(1)(A)(v) of the Act requires each provider to disclose "fully its policies and practices, the disruptions rates of its placements for intercountry adoption, and all fees charged by such [provider] for intercountry adoption." The standard should set a uniform format for all such disclosures to facilitate comparisons among providers. The standard should define disruption, specify the method for calculating disruption rates, and specify the format for disclosing such rates. All fees should be disclosed in advance. No last minute fee increases, baby auctions, or large overseas cash payments should be allowed. (We have found such practices have been VERY frequent in the past.)
- 6. *Training and Counseling.* Section 203(b)(1)(A)(iii) requires providers to supply pre-adoption counseling and guidance. Accreditation standards should also require providers to continue counseling and support after the adoption. We believe this counseling should be available to birth parent(s) as well.
- 7. *Adoptions from the U.S.* Section 303(a)(1)(B) requires that before a provider may arrange for a U.S. resident child to be adopted abroad, the provider first must have been unable to timely to place the child for domestic adoption, despite having "made reasonable efforts to actively recruit and make a diligent search for prospective adoptive parents ... in the United States." The regulations should define what is "timely" in this context and should specify minimum recruitment and search efforts. The accreditation process should verify that such efforts have been made unsuccessfully in every case where a U.S. child has been adopted abroad. The same specifications should be followed and applied as such when the child of another country has been adopted to the U.S.

8. *Home Studies.* Home studies must include all relevant information, favorable as well as unfavorable. Deliberate omissions of any unfavorable information should be grounds for denying accreditation. The records of disrupted adoptions should be examined with care to see that no such omissions occurred. This is in the best interest of the child.

C. Liability and Disclaimers

The Final Drafts' provisions do not adequately prohibit adoption providers from obtaining waivers of liability and disclaimers of representation from their clients. (Comments on Regulations Section 96.13H.4)

Adoption providers should not be allowed to obtain from their clients waivers of liability or broad disclaimers of representation. These agreements typically are signed when prospective adoptive parents first retain the agency, before the provider has identified any child to them. The proposed language of Part 96.13H.4 does not adequately protect clients. The failure to bar disclaimers or representation and the use of the terms "require" and "blanket" provide opportunities for ingenious attorneys to circumvent the intent of these regulations.

Such waivers and disclaimers have no legitimate function in international adoptions. The waivers and disclaimers at issue seek to exempt providers from even modest requirements such as deceit or neglect. In essence these waivers allow providers from being held liable from providing basic care to children; these waivers also do not prohibit providers from lying.

The consequences of failure to exercise due care and of misrepresentations in international adoption have been horrendous for both adoptive parents and adoptees. These waivers are not fair to prospective adoptive parents or to adoptees because they allow for manipulation and misinformation to be provided. These waivers also provide overwhelming power to adoption providers while offering nothing to prospective adopting parents. Adoptees also lose because they in effect become a faceless commodity with no right to be accurately represented. These waivers/disclaimers have no place in international adoption.

D. Birth Parent Rights

Birth parents of an emigrating child must be allowed to withdraw consent up until state court approval. They should also be told the country to which the child is sent.

(Comments on Regulation Section 96.13V.1)

Article 4c of the convention requires that the State Department to ensure "the persons ... whose consent is necessary for adoption have been ... informed of the effects of their consent, ... have given their consent freely ... [and] the consents ... have not been withdrawn..." This is "the supreme law of the land and the judges in every state shall be bound thereby, any thing in the Constitution or Laws of any State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary, notwithstanding" (Constitution, Art. VI). State Laws making birth parent consents irrevocable or limiting the time in which they can be revoked are therefore

invalid in a Convention adoption. Proposed Section 96.13V.9 should reflect this by including in the first bulleted subparagraph, before "and," the phrase "have not been withdrawn."

E. Acton Burnell's Procedures

We are concerned that Acton Burnell and the State Department have mainly consulted with and considered primarily the interest of adoption providers and/or administrators. It appears the "team" and "panel" are comprised mainly by persons previously associated with providers, associations of providers and the Council on Accreditation.

We understand that personnel from Acton Burnell and the State have met with organizations who do not accurately speak for, or represent, all the members of the triad. In fact, it is our understanding that organization who directly represent triad members have not been met with and are not a priority. Also, at one time our attention was directed to the "survey" initially posted by Acton Burnell on its website which was almost entirely directed to adoption providers. We were later pleased to see that the web site was amended to include a page directed to adoptive parents and adoptees.

We firmly believe that organizations that represent adoptees AND birth parents AND adoptive parents should be considered and notified when proposing and formulating future drafts of standards and regulations for comment prior to their publication. We sincerely hope that any possible oversight of was simply a one time event that will not be repeated in the future.

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cc: Ana Colon, Joshua Minchen